

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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MICHAEL S. SUBENKO,

Petitioner,

v.

THE COMMONWEALTH OF
MASSACHUSETTS, THE
BROCKTON DISTRICT
ATTORNEYS OFFICE, and
BROCKTON SUPERIOR COURT,

Respondents.

Civil Action No. 04-10023-GAO

**MOTION TO EXTEND TIME TO RESPOND
TO PETITION FOR A WRIT OF HABEAS CORPUS**

The respondents, by and through counsel, the Attorney General of the Commonwealth of Massachusetts, hereby request that the Court extend the time within which they must respond to the Petition for a Writ of Habeas Corpus that is the subject of the captioned action. The respondents' answer or other responsive pleading currently is due on February 18, 2004. By this motion, the respondents request up to and including March 31, 2004. As grounds for this motion, the respondent states as follows:

1. The records relating to the petitioner's underlying state-court convictions are maintained by the Office of the District Attorney for Plymouth County (the "Plymouth DA"), not by the Office of the Attorney General.
2. Upon receipt of this Court's Order, the undersigned assistant attorney general promptly caused a request to be made to the Plymouth DA for assembly and production of relevant portions of the underlying state-court record, including, but not limited to, copies of the

trial transcripts and post-conviction proceedings. The undersigned counsel has not yet received the records.

3. Absent receipt and review of the relevant records, the respondents cannot meaningfully evaluate threshold defenses under the Antiterrorism and Effective Death Penalty Act (“AEDPA”), such as whether the petitioner has properly exhausted available state-court remedies as required by 28 U.S.C. § 2254(b)(1) and whether this petition is timely filed in accordance with 28 U.S.C. § 2244(d). The time extension sought herein will enable the respondents to compile and evaluate all of the relevant records, and, thereby, be in a position to meaningfully respond to the petition.

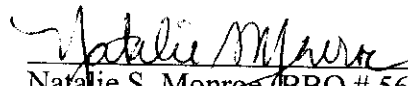
4. Moreover, the undersigned counsel presently is handling a large caseload of post-conviction matters for the Commonwealth of Massachusetts, including numerous federal habeas corpus petitions. In the next thirty days, for example, the undersigned counsel has five memoranda of law due in five separate federal habeas matters pending in the United States District Court for the District of Massachusetts; two answers due in two other federal habeas corpus actions; a motion to dismiss due in Massachusetts Superior Court; and an oral argument in the First Circuit Court of Appeals.

WHEREFORE, the present motion should be allowed and an order should enter allowing the respondents up to and including March 31, 2004 to answer or otherwise respond to the petition.

Respectfully submitted,

THOMAS F. REILLY,
ATTORNEY GENERAL

Dated: February 13, 2004


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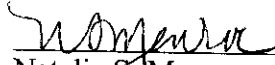
Certificate of Compliance with Local Rule 7.1(A)(2)

I, Natalie S. Monroe, hereby certify that I have been unable to confer with the petitioner, who is incarcerated at the MCI-Norfolk and is not free to accept or make telephone calls during normal business hours. It is believed, in any event, that the petitioner would not voluntarily assent to any portion of the subject motion.


Natalie S. Monroe

Certificate of Service

I hereby certify that on February 13, 2004, I caused a copy of the above document to be served by first-class mail, postage prepaid, upon the *pro se* petitioner, Michael S. Subenko, Prisoner W65867, M.C.I. Norfolk, Norfolk, Massachusetts 02056.


Natalie S. Monroe